Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Mr. Yves Bourgeois,

applicant,

and

Porlier Express Inc.,

employer,

and

Syndicat des Métallos, Local 7065,

certified bargaining agent.

Board File: 29976-C

Mr. Yves Bourgeois,

applicant,

and

Northern Quebec Stevedoring Company Inc.,

employer,

and

Syndicat des Métallos, Local 7065,

certified bargaining agent.

Board File: 29977-C

Canada

Mr. Yves Bourgeois,

applicant,

and

Logistec Stevedoring Inc.,

employer,

and

Syndicat des Métallos, Local 7065,

certified bargaining agent.

Board File: 29978-C

Mr. Yves Bourgeois,

applicant,

and

Tessier Limitée,

employer,

and

Syndicat des Métallos, Local 7065,

bargaining agent.

Board File: 29979-C
Neutral Citation: 2013 CIRB **695**
September 24, 2013

The Canada Industrial Relations Board (the Board) was composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Richard Brabander and Daniel Charbonneau, Members.

Parties of Record

Mr. José Rondeau, for Mr. Yves Bourgeois;

Mr. Jean-François Beaudry, for the Syndicat des Métallos, Local 7065;

Mr. Patrice Boudreau, for Porlier Express Inc.;

Mr. Gérard Morency, for Northern Quebec Stevedoring Company Inc.;

Mr. Patrick Galizia, for Logistec Stevedoring Inc.;

Mr. Michel Denis, C.A., for Tessier Limitée.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

[1] Section 16.1 of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Furthermore, in *Grain Services Union (ILWU-Canada)* v. *Friesen*, 2010 FCA 339, the Federal Court of Appeal indicated that the Board has the discretion to decide applications for revocation without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine the applications without an oral hearing.

I. Facts and Background

[2] Four applications for revocation were filed simultaneously by Mr. Yves Bourgeois on May 8, 2013, pursuant to section 38(1) of the *Code*, to revoke recognition of the Syndicat des Métallos, Local 7065 (the union) (file nos. 29976-C, 29977-C, 29978-C and 29979-C).

[3] The union local represents 1,400 workers in 38 bargaining units who work in different industries, including longshoring, the industry concerned in this matter, in the Sept-Îles port facilities, which serve the Lower North Shore, the Magdalen Islands, the cities of Baie-Comeau and Sept-Îles, and the town of Fermont.

[4] The union was certified by the Board as the bargaining agent representing the employees of three employers, that is, Porlier Express Inc. (file no. 29976-C), Northern Quebec Stevedoring Company Inc. (file no. 29977-C) and Logistec Stevedoring Inc. (file no. 29978-C). Although the union has a collective agreement with Tessier Limitée (file no. 29979-C), the union has not been certified by the Board and so a voluntary recognition arrangement exists in that file.

[5] Below is a brief description of the four bargaining units concerned by the applications for revocation and the facts particular to each file.

- **Porlier Express Inc. (29976-C)**

[6] The bargaining certificate covering the employees of Porlier Express Inc. (Porlier) was issued by the Board on December 15, 2010 (9976-U). The bargaining unit is described as follows:

> all employees of Porlier Express Inc. in Sept-Îles engaged in the loading and unloading of vessels and those engaged in the shipping and receiving of merchandise (coastal and deep sea transportation) to and from vessels, docks or warehouses, as well as in securing and unsecuring merchandise on rail cars, **including** employees classified as longshoremen, team leader, mobile crane operator, lift truck driver and mooring worker, **excluding** office staff, employees covered by another collective agreement, foremen and those above the rank of foreman.

[7] On the date the application for revocation was filed in this case, the collective agreement that existed between the union and Porlier was effective from May 21, 2007, to May 20, 2012. The union and Porlier signed a new collective agreement on May 13, 2013, that is, five days after the application for revocation was filed.

- **Northern Quebec Stevedoring Company Inc. (29977-C)**

[8] The bargaining certificate covering the employees of Northern Quebec Stevedoring Company Inc. (Northern Quebec Stevedoring) was issued by the Board on August 16, 2012 (10299-U). The bargaining unit is described as follows:

> all employees of Northern Quebec Stevedoring Company Inc. in Sept-Îles engaged in the loading and unloading of vessels and those engaged in the shipping and receiving of goods (coastal and deep sea transportation) to and from vessels, docks or warehouses, including the stowage of those goods on railway cars, in particular employees classified as longshoreman, team leader, mobile crane operator, lift truck operator and those engaged in mooring operations, **excluding** clerical and supervisory staff and those above.

[9] On the date the application for revocation was filed, there was no collective agreement between the union and Northern Quebec Stevedoring. They signed a collective agreement on May 10, 2013, that is, two days after the application for revocation was filed.

- **Logistec Stevedoring Inc. (29978-C)**

[10] The bargaining certificate covering the employees of Logistec Stevedoring Inc. (Logistec) was issued by the Board on August 29, 1994 (6527-U). The bargaining unit is described as follows:

> all employees of Logistec Stevedoring Inc., including employees in Sept-Iles, Quebec, assigned to loading and unloading of vessels, and employees assigned to receiving and shipping merchandise (coastal and ocean navigation) to vessels, wharfs and warehouses, including stocking merchandise on railway cars, classified as longshoreman, lead hand, mobile crane operator, fork lift operator, checker, guard and docker, **excluding** foremen and those above the rank of foreman, and office personnel.

[11] The union has raised a preliminary objection respecting the timeliness of this application for revocation. It submits that it entered into a collective agreement with Logistec on April 28, 2013, that is, 10 days before the application for revocation was filed. The collective agreement in question would be effective from May 21, 2012, to May 20, 2018. The applicant challenges the validity of that collective agreement, for reasons that will be addressed later in this decision.

[12] It is useful to note that the bargaining for the renewal of the collective agreements for each of the units concerned by the applications for revocation first took place between the union and Logistec, and the new collective agreement between the union and Logistec was then adapted to the other employers.

- **Tessier Limitée (29979-C)**

[13] While the union has not been certified by the Board as a bargaining agent to represent the employees of Tessier Limitée (Tessier), the union did enter into a collective agreement with Tessier effective from May 21, 2007, to May 20, 2012, and was therefore voluntarily recognized by Tessier. According to the report of the Board's investigating officer and the collective agreement, the bargaining unit might be described as follows:

> all employees of Tessier Limitée, including workers at the Port of Sept-Îles, Quebec, and at the La Relance wharf employed as "longshoremen" and engaged in the handling of cargo to be loaded onto or offloaded from vessels; loading and unloading of containers of all kinds; loading, unloading and handling of materials used to lash and unlash, fix or secure cargo on deck or in the holds of docked ships; loading and unloading of railcars and trucks of all classes, including the securing, lashing and unlashing of cargo on railcars and trucks including the rear platform; piling cargo in sheds; stacking cargo and sweeping and cleaning sheds and the wharf; including employees who

might be classified as longshoremen, signalers, checkers and head checkers, team leaders, onboard crane operators, mobile crane operators, 8 tonne or less equipment operators, forklift operators and wheel loader operators.

(translation)

[14] On the date the application for revocation was filed in this case, the last collective agreement entered into by the union and Tessier was effective from May 21, 2007, to May 20, 2012. The two signed a new collective agreement on May 14, 2013, that is, six days after the application for revocation was filed.

II. Submissions of the Parties

[15] The union challenges all four applications for revocation. The positions of the parties in each file are summarized below.

A. Porlier (29976-C)

[16] The union essentially submits that the members who signed the application for revocation were subjected to reprisals and intimidation by the applicant, Mr. Bourgeois, and his supporters. The union alleges that the applicant, assisted by two supporters, called several members of the bargaining unit to his home on May 4 and 5, 2013, and that a number of longshoremen, who preferred to remain anonymous, were afraid of reprisals if they did not go.

[17] The union also submits that several longshoremen, who preferred to remain anonymous, felt intimidated by the presence of Mr. Bourgeois's two supporters and signed a document out of fear of reprisals or under the false pretence that all the longshoremen had signed the same document.

[18] Consequently, the union submits that any signature related to the application for revocation in this matter was vitiated by the conduct of Mr. Bourgeois and his supporters.

[19] The union asks the Board to check with the employees who signed the application for revocation whether their support was free and voluntary or, alternatively, to order a vote.

[20] The employer did not make any submissions.

[21] The applicant merely denies the union's allegations and maintains the application for revocation.

B. Northern Quebec Stevedoring (29977-C)

[22] The union has raised a preliminary objection, submitting that the application for revocation is untimely because it was filed outside the time frame provided for under sections 38 and 24(2)(*b*) of the *Code*. It adds that, to its knowledge, the applicant did not obtain consent from the Board to file an application for revocation outside the time frame provided for under section 24 of the *Code*.

[23] The employer did not make any submissions.

[24] The applicant submits that the collective agreement between the parties for the period of May 21, 2012, to May 20, 2018, was not lawfully entered into. It argues that the collective agreement was ratified by the executive committee of Local 7065 when it should have been ratified by the longshoremen themselves.

C. Logistec (29978-C)

[25] The union has raised a preliminary objection, submitting that the parties are bound by a collective agreement effective from May 21, 2012, to May 20, 2018. The collective agreement was signed on April 28, 2013. The union accordingly submits that the application for revocation was filed outside the time frame provided for under section 38 of the *Code*.

[26] With regard to the collective bargaining with Logistec, the union submits that bargaining sessions between the employer's representatives and labour representatives were held on April 22 and 23, 2013, and that Logistec made a final offer to the union on April 23. According to the union, Mr. Yves Bourgeois was present at those sessions and was a member of the bargaining committee. Members were called to a meeting on April 27, 2013, to vote on the offers. Once the meeting had been called to order, a supporter of Mr. Bourgeois objected to the presence of a permanent union official, Mr. Gilles Ayotte, stating that he had made inappropriate comments to a longshoreman. The members then walked out of the meeting. According to the union, although members were given the opportunity to vote on the employer's offers, they

chose not to vote on the final offers, thus leaving it to the executive of Local 7065 to decide what happens next. The union adds that consultation of members was never a condition for the existence of a valid collective agreement.

[27] The union states that, given this situation and the employees' refusal to vote on the final offers, the executive decided that it was its duty and in the interest of all of the members of the unit concerned, to approve and ratify the collective agreement between the unit and Logistec, and subsequently sign the other collective agreements with Northern Quebec Stevedoring, Porlier and Tessier. The union submits that the collective agreement between Logistec and the union was lawfully entered into and was approved and ratified by the executive committee of Local 7065 on April 27, 2013.

[28] The union points out that the bargaining agent concerned in these files is Local 7065 of the Syndicat des Métallos even though the applicant is suggesting that it is Local 7065-48. The union adds that there is in fact no Local 7065-48 and that the number in question is just an administrative number used by Local 7065 of the Syndicat des Métallos to identify groups of workers as well as their respective employers.

[29] The employer submits that, on January 23, 2012, the union sent Logistec a notice to bargain, pursuant to section 49 of the *Code*. It outlines the meetings held, which led to the signing on April 28, 2013, of the new collective agreement effective from May 21, 2012, to May 20, 2018. The employer submits that the applicant filed its application for revocation outside the time frame provided for in sections 38 and 24(2)(*d*) of the *Code* and that the application must be dismissed.

[30] The applicant submits that, contrary to what the union has stated, the application for revocation was filed within the time frame provided for in sections 38 and 24(2)(*d*) of the *Code*.

[31] The applicant states that the biggest point of contention in the bargaining process involved dispatching of workers, which the union had handled prior to the renewal of the collective agreement. The applicant alleges that, at a general meeting held on March 14, 2013, bargaining unit members unanimously rejected employer offers that, among other things, provided for the

employer to handle dispatching of workers. He explains that, on April 16, 2013, the membership voted to have dispatching of workers remain in the hands of the union.

[32] The applicant submits that the collective agreement referred to by the union was not lawfully entered into as it was ratified by the executive of Local 7065 rather than by the longshoremen themselves. He alleges that the special meeting of the membership on April 27, 2013, had been called the day before, by telephone, contrary to the local section's past practice. The applicant explains that the members walked out of the meeting and therefore no ratification had been possible. He asks that the Board look into whether or not a new collective agreement had been entered into when the application for revocation was filed.

D. Tessier (29979-C)

[33] The union submits that the members who signed the application for revocation were subjected to reprisals and intimidation by the applicant, Mr. Bourgeois, and his supporters. It reiterates its allegations made in the Porlier file (29976-C) and asks the Board to check with the longshoremen as to whether or not their support for the application for revocation was free and voluntary or, alternatively, to order a vote.

[34] The employer did not make any submissions.

[35] The applicant submits that a majority of the longshoremen signed the application for revocation and that they did so without any threat of reprisal. He reiterates the allegations made in the Northern Quebec Stevedoring and Logistec files regarding the circumstances in which bargaining took place and the collective agreement was entered into.

III. Analysis and Decision

[36] For ease of reference, the relevant sections of the *Code* on applications for revocation and the time of application read as follows:

> 38. (1) Where a trade union has been certified as the bargaining agent for a bargaining unit, any employee who claims to represent a majority of the employees in the bargaining unit may, subject to subsection (5), apply to the Board for an order revoking the certification of that trade union.
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> (2) An application for an order pursuant to subsection (1) may be made in respect of a bargaining agent for a bargaining unit:

(*a*) where a collective agreement applicable to the bargaining unit is in force, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24 unless the Board consents to the making of the application for the order at some other time; and

(*b*) where no collective agreement applicable to the bargaining unit is in force, at any time after a period of one year from the date of certification of the trade union.

(3) Where a collective agreement applicable to a bargaining unit is in force but **the bargaining agent that is a party to the collective agreement has not been certified by the Board**, any employee who claims to represent a majority of the employees in the bargaining unit may, subject to subsection (5), apply to the Board for an order declaring that the bargaining agent is not entitled to represent the employees in the bargaining unit.

(4) An application for an order pursuant to subsection (3) may be made in respect of a bargaining agent for a bargaining unit:

(*a*) during the term of the first collective agreement that is entered into by the employer of the employees in the bargaining unit and the bargaining agent :

...

(ii) thereafter, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24; and;

(*b*) in any other case, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24.

...

24. (1) A trade union seeking to be certified as the bargaining agent for a unit that the trade union considers constitutes a unit appropriate for collective bargaining may, subject to this section and any regulations made by the Board under paragraph 15(*e*), apply to the Board for certification as the bargaining agent for the unit.

(2) Subject to subsection (3), an application by a trade union for certification as the bargaining agent for a unit may be made:

(*a*) where no collective agreement applicable to the unit is in force and no trade union has been certified under this Part as the bargaining agent for the unit, at any time;

(*b*) where no collective agreement applicable to the unit is in force but a trade union has been certified under this Part as the bargaining agent for the unit, after the expiration of twelve months from the date of that certification or, with the consent of the Board, at any earlier time;

(*c*) where a collective agreement applicable to the unit is in force and is for a term of not more than three years, only after the commencement of the last three months of its operation; and;

(*d*) where a collective agreement applicable to the unit is in force and is for a term of more than three years, only after the commencement of the thirty-fourth month of its operation and before the commencement of the thirty-seventh month of its operation and, thereafter, only:

(i) during the three month period immediately preceding the end of each year that the collective agreement continues to operate after the third year of its operation, and,

(ii) after the commencement of the last three months of its operation.

(emphasis added)

[37] An application for revocation must meet certain requirements. In *Robinson*, 2003 CIRB 209, the Board summarized those requirements as follows:

> [34] It is well established that an application to terminate a trade union's bargaining rights must meet certain requirements. It must be made by an employee in the bargaining unit, within the time limits prescribed by the *Code*, and without any interference by the employer (see *Mike Schembri et al.* (1998), 106 di 68, 40 CLRBR (2d) 257, and 98 CLLC 220-040 (CLRB no. 1221); and *Uli Henssler et al.* (1997), 105 di 45; 38 CLRBR (2d) 96; and 98 CLLC 220-003 (CLRB no. 1211)). Additional requirements come into play in the case where a first collective agreement has not yet been concluded (see *Jean-Claude Harrison et al.* (1983), 53 di 85; and 4 CLRBR (NS) 258 (CLRB no. 417); and *Donald Nosworthy* (1981), 45 di 153 (CLRB no. 330)).

[38] In the instant matter, the union objects to the four applications for revocation for reasons specific to each of the files. It does not allege any interference by the employer.

[39] The Board must deal with two preliminary objections raised by the union, in the Northern Quebec Stevedoring file (29977-C) and the Logistec file (29978-C). The union argues that the applications are untimely because they were not filed within the time frame provided for in the *Code*. The applicant, on the other hand, contests the validity of the new collective agreements signed with the employers, maintaining that the agreements are unlawful because they were not properly ratified by the membership.

[40] The union moreover alleges, in regard to the other two applications, in the Porlier file (29976-C) and the Tessier file (29979-C), that the employees who signed the two applications were subjected to threats and intimidation by the applicant. The applicant denies those allegations.

[41] For the reasons that follow, the Board finds that the applications for revocation in the Northern Quebec Stevedoring file (29977-C) and the Logistec file (29978-C) are untimely and therefore dismisses them. As for the Porlier file (29976-C) and the Tessier file (29979-C), the

Board has decided to order a representation vote to verify the level of support for the applications for revocation.

A. Applications for revocation in Northern Quebec Stevedoring file (29977-C) and Logistec file (29978-C)

1. Northern Quebec Stevedoring

[42] The Board considers the situation by taking into account the date on which the application for revocation is filed rather than the date on which the decision is issued, given that the parties' situation may change in the interim (see *J. Phillips et al.* (1978), 34 di 603; and [1979] 1 Can LRBR 180 (CLRB no. 168); and *Genge*, 2007 CIRB 395).

[43] On May 8, 2013, when the application for revocation was filed, the union had been certified by the Board since August 16, 2012, and no collective agreement existed. Indeed, the first collective agreement between the union and Northern Quebec Stevedoring was signed on May 10, 2013, that is, two days after the application for revocation was filed. A bargaining agent in these circumstances is protected for 12 months from the date of its certification against an application for revocation. Section 38(2)(*b*) of the *Code* establishes that, where no collective agreement is in force, an application for revocation may be filed after a period of one year from the date of certification. In *Genge*, *supra*, the Board confirmed that it did not have the discretion to abridge that protective period in the context of an application for revocation:

> [21] The equivalent revocation provision for the situation contemplated by section 24(2)(*b*) is found at section 38(2)(*b*). A comparable 12-month protection against revocation exists for the bargaining agent following certification. However, the Board does not have a discretion, unlike for a certification application subject to section 24(2)(*b*), to abridge this 12-month protective period.

[44] Section 38(2)(*b*) of the *Code* thus prevented the members of the bargaining unit in question here from seeking revocation of the bargaining agent's certification.

[45] In view of the foregoing, the Board finds that there is no need to determine whether the new collective agreement, which was signed after the filing of the application for revocation, was in fact entered into on May 10, 2013.

[46] For these reasons, the application for revocation filed on May 8, 2013, in the Northern Quebec Stevedoring file (29977-C) is untimely. Accordingly, the application is dismissed.

2. Logistec Stevedoring Inc.

[47] The application for revocation in this case was filed on May 8, 2013. The certification order is dated August 29, 1994. The former collective agreement between the union and Logistec was in force from May 21, 2007, to May 21, 2012, that is, for a period of more than three years for purposes of the time limits set out in sections 38 and 24 of the *Code*.

[48] Pursuant to sections 38(2)(*a*) and 24(2)(*d*) of the *Code*, an application for revocation concerning a bargaining unit to which a collective agreement applies for a term of more than three years may be filed at the following times:

- after the commencement of the thirty-fourth month of the collective agreement's operation (section 24(2)(*d*));
- thereafter, during the three month period immediately preceding the end of each year that the collective agreement continues to operate (section 24(2)(*d*)(i));
- after the commencement of the last three months of the collective agreement's operation (section 24(2)(*d*)(ii)).

[49] In this case, the application for revocation was filed after the last three months of operation of the collective agreement, which was effective from May 21, 2007, to May 20, 2012. However, the union alleges that a new collective agreement was signed on April 28, 2013, thereby preventing the applicant from filing an application for revocation on May 8, 2013.

[50] The issue raised by the union requires that the Board determine whether or not a new collective agreement was signed on April 28, 2013, that is, only a few days before the application for revocation was filed. According to the applicant, the collective agreement is unlawful because it was not ratified by the bargaining unit membership. If a new collective agreement were entered into on April 28, 2013, the application for revocation filed on May 8, 2013 would be untimely.

[51] Under section 16(*p*) of the *Code*, the Board may, in relation to any proceeding before it, make a determination about whether or not a collective agreement has been entered into:

> 16. The Board has, in relation to any proceeding before it, power:
>
> ...
>
> *p*) to decide for all purposes of this Part any question that may arise in the proceeding, including, without restricting the generality of the foregoing, any question as to whether:
>
> ...
>
> (vi) a collective agreement has been entered into,
>
> (vii) any person or organization is a party to or bound by a collective agreement, and
>
> (viii) a collective agreement is in operation.

[52] Section 3 of the *Code* defines "collective agreement" as follows:

> "collective agreement" means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters.

[53] In *Ledcor Industries et al.* (1998), 106 di 122; 41 CLRBR (2d) 145; and 99 CLLC 220-005 (CLRB no. 1225) (application for judicial review dismissed in *Ledcor Industries Ltd.* v. *Construction and General Workers' Union, Local 92 et al.* (2000), 251 N.R. 285; and (1999) 251 N.R. 288 (F.C.A., nos. A-362-98 and A-363-98)), the Board confirmed that ratification of a collective agreement is not a pre-condition for the existence of a collective agreement:

> Ratification of the collective agreement by the bargaining unit employees is not a requirement under the *Code*. The definition of "collective agreement" requires only that the agreement be entered into between the employer and the bargaining agent. It does not specify, nor refer to, bargaining unit employees. Ratification is an internal matter between the trade union and the bargaining unit employees. Consequently, ratification will be a pre-condition for the existence of a valid collective agreement only when the union's constitution requires it. See in this regard the comments of the B.C. Board in *Lytton Lumber Ltd.*, no. 305/85, October 23, 1985)
>
> (pages 127; 150 and 143,042)

[54] In a Board decision made on reconsideration in *Handlex Groundhandling Services Inc.*, 2009 CIRB 480 (*Handlex 480*), the Board stated that the *Code* does not require that a trade union follow the common practice of holding a ratification vote. In that matter, as in the instant case, the union had called members to a meeting to vote on employer offers, but the members in

attendance who had been entitled to vote had walked out of the meeting and so had not exercised their right to vote.

[55] In the original decision, *Handlex Groundhandling Services Inc.*, 2009 CIRB LD 2209, the matter before the Board had involved an application made in a raid situation by the Canadian Union of Public Employees, Local 4930 (CUPE), concerning a unit of Handlex employees already represented by the Cartage and Miscellaneous Employees' Union, Local 931 (Teamsters Quebec). The Board had found that the application had been made within the time frames set out in section 24 of the *Code* and had decided to certify CUPE. One of the key factors on which this matter hinged was whether or not a collective agreement had been in force on the date of filing of the raid application. In the original decision, the Board found that there had been no "formal approval" of the collective agreement by the bargaining unit members when the ratification vote organized by the former bargaining agent had been held. The vote had been held, but only three members of the bargaining committee and two other individuals had been present.

[56] In *Handlex 480*, *supra*, the Board disagreed with the conclusions of the panel seized of the original matter regarding the validity of the ratification vote. The Board stated the following:

> [48] We respectfully disagree, however, with the conclusion of the panel seized of the certification application that the Teamsters were not entitled to conduct the ratification vote merely because some voters in attendance asked for it to be postponed or because they walked out without voting.
>
> [49] If the members in attendance entitled to vote had not wanted the Teamsters as their bargaining agent, then all they had to do was vote against Handlex's offer. That would have ensured that no collective agreement came into force. It would have ended any debate about the timeliness of CUPE's later certification application.
>
> [50] The Board cannot speculate why a group of eligible voters would attend a ratification meeting, but decide not to vote. They no doubt had reasons which they considered valid. However, their decision not to vote did not prevent the Teamsters from holding the vote in accordance with its detailed notice.
>
> [51] The Board also disagrees with the conclusion in *Handlex* (LD 2209), *supra*, that the conciliator's September 10, 2008, recommendations somehow restricted the Teamsters' ability to hold a vote on Handlex's final offer.
>
> [52] The vote on September 26, 2008, dealt with the protocol negotiated with the assistance of the conciliator. The December 4, 2008, vote, which apparently was conducted after the FTQ became involved in a raid situation, contained no such conditions.

> [53] Accordingly, given that the Teamsters, whether required to or not, held a ratification vote, and given that any member who attended had the opportunity to vote, we respectfully disagree that the vote was somehow invalidated when a number of eligible voters refused to exercise their right to vote.
>
> [54] In any vote of this type, if a majority of the eligible voters decide not to exercise their voting rights, then they have to accept, as a consequence, that their rights will be decided by those who do in fact vote.

[57] In the instant matter, the evidence indicates that the members of the bargaining unit were called to a meeting on April 27, 2013, to vote on Logistec's offers. After the meeting had been called to order, the members decided to walk out when the permanent union official refused to leave. That was when the executive of Local 7065 deemed it its duty, and in the interest of the members of the unit concerned, to approve the employer's final offers and sign the collective agreements with the different employers concerned, including Logistec.

[58] Unlike the situation in *Handlex 480*, *supra*, in which a ratification vote was held despite the small number of voters, no ratification vote was held in the instant matter. In fact, all the members of the unit walked out of the meeting of April 27, 2013, thus leaving the executive committee to decide what to do about the employer's offers. In these particular circumstances, the members of the executive committee voted and unanimously approved the employer's offers. The collective agreement was signed the next day.

[59] The applicant maintains that the collective agreement is unlawful because it was ratified by the executive committee, which comprises employees other than longshoremen and employees not working for the employer. The Board wishes to point out in this regard that it has a very limited role with respect to internal union affairs other than in very specific circumstances, such as in matters involving internal union discipline (sections 95(*f*) and 95(*g*) of the *Code*). In fact, the Board recognized that limited role in its reconsideration decision in *Handlex 480*, *supra*:

> [37] The Board recognizes that it has a limited role over internal union affairs. It does not have a general supervisory power over a union's constitution or by-laws. Any Board involvement in internal union affairs requires the *Code* to be specific on the subject matter such as for certain types of internal union discipline (*Jim Saunders* (1988), 74 di 165 (CLRB no. 701)).

[60] In the instant matter, no one has claimed that the union's constitution or by-laws required that the executive committee hold a ratification vote before signing the collective agreement.

[61] In this situation and in light of the decision in *Handlex 480*, *supra*, the Board finds that the union and Logistec did enter into a new collective agreement on April 28, 2013. That collective agreement is effective from May 21, 2012, to May 20, 2018. Consequently, the application for revocation was filed outside the time limits provided for under section 24(2)(*d*) of the *Code*.

[62] For these reasons, the application for revocation in the Logistec file (29978-C) filed on May 8, 2013, is untimely. Accordingly, the application is dismissed.

B. Applications for revocation in Porlier file (29976-C) and Tessier file (29979-C)

1. Porlier (29976-C)

[63] The application for revocation in this case was filed on May 8, 2013. While the bargaining agent did not raise any preliminary objection regarding the timeliness of the application, it submits that the applicant obtained the support of several members who signed the application through intimidation or false pretences. However, while the union makes these allegations, it does not provide any supporting evidence in this regard. Further, no allegations in this regard were made to the Board directly by the employees.

[64] The Board finds that the application for revocation is timely. In fact, on the date the application for revocation was filed, the union had already negotiated and lived under at least one collective agreement, which was effective from May 21, 2007, to May 20, 2012. The new collective agreement between the union and Porlier was signed on May 13, 2013, that is, five days after the application for revocation was filed, and so it cannot be considered in determining the open period.

[65] Section 38(2)(*a*) refers to section 24 of the *Code* for purposes of determining the permissible application time for an application for revocation when the bargaining agent has been certified and a collective agreement is applicable to the bargaining unit concerned. Consequently, the Board must refer to the relevant provisions of section 24 of the *Code* to determine whether or not an application for revocation is timely.

[66] Sections 24(2)(*c*) and 24(2)(*d*) create timeliness requirements in situations where the certified bargaining agent has already negotiated and lived under at least one collective agreement (see *Genge*, *supra*).

[67] Under section 24(2)(*d*)(ii) of the *Code*, where a collective agreement applicable to the unit is for a term of more than three years, an application may be filed after the commencement of the thirty-fourth month of its operation.

[68] In *Friesen*, 2009 CIRB 436 (application for judicial review dismissed by the Federal Court of Appeal in *Grain Services Union (ILWU-Canada)* v. *Randal Friesen et al*, *supra*), the Board stated that an application for revocation may be filed well after the last three months of operation of a collective agreement as long as a new collective agreement has not been entered into by the parties and the parties have not acquired the right to strike or lockout.

[69] Since the applicant filed its application for revocation on May 8, 2013, after the commencement of the last three months of operation of the collective agreement in effect from May 21, 2007, to May 20, 2012, and prior to the signing of the new collective agreement on May 13, 2013, the application for revocation is timely under sections 38(2)(*a*)(ii) and 24(2)(*d*)(ii) of the *Code*.

[70] In light of the evidence on file and in accordance with the Board's common practice, where the union objects to the application, such as in this case, and the applicant has established a level of support of the application, a representation vote is ordered to ensure that all employees in the bargaining unit no longer wish to have Local 7065 of the Syndicat des Métallos represent them. The Board explained its common practice in this regard in *Robinson*, *supra*:

> [35] Central to a revocation application is the issue of majority support. Once the applicant has established a level of support for the application, evidenced by employee signatures, the principal means by which the Board assesses the degree of support for the revocation is by conducting a representational vote (see *Greg W. Prichard* (1998), 107 di 7; 43 CLRBR (2d) 314; and 98 CLLC 220-072 (CLRB no. 1227); and *Alison Albert et al.* (1987), 69 di 110; 87 CLLC 16,031 (CLRB no. 622)). Giving the employees the opportunity to exercise their democratic prerogative is generally deemed to be a fair and accurate method of determining employee wishes on revocation applications. Periodically, however, a case may come before the Board where a significant majority, if not all the members of the unit, submitted written evidence supporting the revocation and the union does not object to the application. In such a situation, the revocation may be granted without holding a vote. ...

[71] The Board accordingly directs that the voting unit comprise the following:

> all employees of Porlier Express Inc. in Sept-Îles engaged in the loading and unloading of vessels and those engaged in the shipping and receiving of merchandise (coastal and deep sea transportation) to and from vessels, docks or warehouses, as well as in securing and unsecuring merchandise on rail cars, including employees classified as longshoremen, team leader, mobile crane operator, lift truck driver and mooring worker, **excluding** office staff, employees covered by another collective agreement, foremen and those above the rank of foreman.

[72] The employees eligible to cast ballots in the representation vote are those who worked for the employer as of May 8, 2013, and are still working for the employer on the day of the vote.

[73] The Board will consequently await the results of the vote to decide how to proceed with the application for revocation in the Porlier file (29976-C).

2. Tessier (29979-C)

[74] Although the application for an order to revoke certification in the Tessier file was filed by the applicant under section 38(1) of the *Code*, it should have been filed under section 38(3) of the *Code* given that it involves, in this case, a bargaining agent that is a party to a collective agreement but has not been certified by the Board.

[75] The bargaining agent does not raise any preliminary objection regarding the timeliness of the application but, as in the Porlier file (29976-C), it alleges that the members' signatures were vitiated by threats and intimidation on the part of the applicant. However, it does not provide any supporting evidence in this regard. Further, no allegations in this regard were made to the Board directly by the employees.

[76] The time limit for filing an application under section 38(3) of the *Code* is set out in section 38(4). Sections 38(4)(*a*)(ii) and 38(4)(*b*) refer to section 24 of the *Code*.

[77] On May 8, 2013, the date the application for revocation was filed, the union and the employer had negotiated and lived under a collective agreement with a term of more than three years (May 21, 2007, to May 20, 2012). The new collective agreement between the union and Tessier was signed on May 14, 2013, that is, six days after the application for revocation was filed, and therefore cannot be considered in determining the open period.

[78] Under section 24(2)(*d*)(ii) of the *Code*, where the collective agreement applicable to the unit is for more than three years, the application may be filed after the commencement of the last three months of operation. As indicated by the Board in *Friesen*, *supra*, the period can remain open well after the last three months of operation of the collective agreement as long as a new collective agreement has not been entered into by the parties and the parties have not acquired the right to strike or lockout.

[79] Given that the applicant filed its application for revocation on May 8, 2013, after the commencement of the last three months of the operation of the collective agreement effective from May 21, 2007, to May 20, 2012, and prior to the signing of the new collective agreement, the application is timely under sections 38(4)(*a*)(ii) and 24(2)(*d*)(ii) of the *Code*.

[80] As explained in *Robinson*, *supra*, the principal means by which the Board assesses the degree of support for an application for revocation where the union objects to the application and the applicant has established a level of support for it, evidenced by employee signatures, is by ordering that a representational vote be conducted.

[81] In light of the evidence on file and in accordance with the Board's common practice, where the union objects to the application, such as in this case, and the applicant has established a level of support for the application, the Board orders that a representation vote be conducted to ensure that all of the employees in the bargaining unit affected no longer wish to have Local 7065 of the Syndicat des Métallos represent them.

[82] The Board accordingly orders that the voting unit comprise the following:

> all employees of Tessier Limitée, including workers at the Port of Sept-Îles, Quebec, and at the La Relance wharf employed as "longshoremen" and engaged in the handling of cargo to be loaded onto or offloaded from vessels; loading and unloading of containers of all kinds; loading, unloading and handling of materials used to lash and unlash, fix or secure cargo on deck or in the holds of docked ships; loading and unloading of railcars and trucks of all classes, including the securing, lashing and unlashing of cargo on railcars and trucks including the rear platform; piling cargo in sheds; stacking cargo and sweeping and cleaning sheds and the wharf; including employees who might be classified as longshoremen, signalers, checkers and head checkers, team leaders, onboard crane operators, mobile crane operators, 8 tonne or less equipment operators, forklift operators and wheel loader operators.

[83] The employees eligible to cast ballots in the representation vote are those who worked for the employer as of May 8, 2013, and are still working for the employer on the day of the vote.

[84] The Board will consequently await the results of the vote to decide how to proceed with the application for revocation in this file.

C. Conclusion

[85] Pursuant to its authority under section 16(*g*) of the *Code*, the Board directs the four employers concerned by this decision to distribute a copy of this decision to all employees in the bargaining units currently represented by Local 7065 of the Syndicat des Métallos **by September 30, 2013**, at the latest.

[86] For all of the foregoing reasons, the applications for revocation in the Northern Quebec Stevedoring file (29977-C) and the Logistec file (29978-C) are dismissed.

[87] The applications for revocation in the Porlier file (29976-C) and Tessier file (29979-C) are timely and the Board orders that a representation vote be held for each of those files. Industrial Relations Officer, Jean-Daniel Tardif, is hereby appointed to conduct the vote and will be entering into contact with the parties shortly.

[88] This is a unanimous decision of the Board.

Translation

Louise Fecteau
Vice-Chairperson

Richard Brabander
Member

Daniel Charbonneau
Member